

The House Committee on Judiciary offers the following substitute to HB 235:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 9 of Title 31 of the Official Code of Georgia Annotated, relating to  
2 consent for surgical or medical treatment, so as to provide for additional persons and entities  
3 that shall be authorized to consent to surgical or medical treatment on behalf of an  
4 incapacitated person; to provide for legislative findings; to provide for immunity; to amend  
5 Article 2 of Chapter 4 of Title 29 of the Official Code of Georgia Annotated, relating to  
6 procedure for appointment of guardians for adults, so as to provide for expedited judicial  
7 intervention for the appointment of a temporary medical consent guardian; to provide for  
8 definitions; to provide requirements for a petition, supporting documentation, and notice; to  
9 provide for preliminary and evidentiary hearings; to provide for termination of a temporary  
10 medical consent guardianship; to provide for immunity; to provide for related matters; to  
11 provide for an effective date; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 The General Assembly finds and declares that timely access to health care for all persons is  
15 an important objective for the State of Georgia; that the autonomy of persons with  
16 decision-making capacity to make health care decisions for themselves must be respected;  
17 and that, in cases involving persons with impaired decision-making capacity, efforts should  
18 be made to ensure that health care decisions are based, to the extent possible, on the patient's  
19 own personal beliefs and values or, when such beliefs and values are unknown, based on the  
20 patient's best interests. The General Assembly further finds that the current process of  
21 judicial authorization to obtain consent for medical care for those with impaired  
22 decision-making capacity has in some cases resulted in undue delay in the provision of  
23 necessary care. The General Assembly further finds and declares that the public interest will  
24 be served by continuing to support the surrogate decision-making role of family members,  
25 while assuring that those individuals without available family members have access to  
26 medical care, consistent with the patient's values and preferences.

H. B. 235 (SUB)

**SECTION 2.**

Chapter 9 of Title 31 of the Official Code of Georgia Annotated, relating to consent for surgical or medical treatment, is amended by revising Code Section 31-9-2, relating to persons authorized to consent to surgical or medical treatment, as follows:

"31-9-2.

(a) In addition to such other persons as may be authorized and empowered, any one of the following persons is authorized and empowered to consent, either orally or otherwise, to any surgical or medical treatment or procedures not prohibited by law which may be suggested, recommended, prescribed, or directed by a duly licensed physician:

(1) Any adult, for himself or herself, whether by living will, advance directive for health care, or otherwise;

(1.1) Any person authorized to give such consent for the adult under an advance directive for health care or durable power of attorney for health care under Chapter 32 of Title 31;

(2) In the absence or unavailability of a person authorized pursuant to paragraph (1.1) of this subsection, any married person, whether an adult or a minor, for his or her spouse;

~~(2)~~(3) In the absence or unavailability of a living spouse, any parent, whether an adult or a minor, for his or her minor child;

~~(3) Any married person, whether an adult or a minor, for himself or herself and for his or her spouse;~~

(4) Any person temporarily standing in loco parentis, whether formally serving or not, for the minor under his or her care; and any guardian, for his or her ward;

(5) Any female, regardless of age or marital status, for herself when given in connection with pregnancy, or the prevention thereof, or childbirth; or

(6) Upon the inability of any adult to consent for himself or herself and in the absence of any person to consent under paragraphs (1.1) ~~(2)~~ through (5) of this subsection, the following persons in the following order of priority:

(A) Any adult child for his or her parents;

(B) Any parent for his or her adult child;

(C) Any adult for his or her brother or sister; ~~or~~

(D) Any grandparent for his or her grandchild;

(E) Any adult grandchild for his or her grandparent; or

(F) Any other adult relative of the patient, including, but not limited to, his or her niece, nephew, aunt, or uncle.

In the absence, after reasonable inquiry, of any person authorized in this subsection to consent for the patient, a hospital or other health care facility or any interested person may initiate proceedings for expedited judicial intervention to appoint a temporary medical consent guardian pursuant to Code Section 29-4-18.

(b) Any person authorized and empowered to consent under subsection (a) of this Code section shall, after being informed of the provisions of this Code section, act in good faith to consent to surgical or medical treatment or procedures which the patient would have wanted had the patient understood the circumstances under which such treatment or procedures are provided. The person who consents on behalf of the patient in accordance with subsection (a) of this Code section shall have the right to visit the patient in accordance with the hospital or health care facility's visitation policy.

(c) For purposes of this Code section, the term 'inability of any adult to consent for himself or herself' ~~shall mean~~ means a determination in the medical record by a licensed physician after the physician has personally examined the adult that the adult 'lacks sufficient understanding or capacity to make significant responsible decisions' regarding his or her medical treatment or the ability to communicate by any means such decisions.

(d)(1) No hospital or other health care facility, health care provider, or other person or entity shall be subject to civil or criminal liability or discipline for unprofessional conduct solely for complying in good faith with any direction or decision by any person authorized and empowered to consent under subsection (a) of this Code section even if death or injury to the patient ensues. Each hospital or other health care facility, health care provider, and any other person or entity who acts in good faith reliance on any such direction or decision shall be protected and released to the same extent as though such person had interacted directly with the patient as a fully competent person.

(2) No person authorized and empowered to consent under subsection (a) of this Code section who, in good faith, acts with due care for the benefit of the patient, or who fails to act, shall be subject to civil or criminal liability for such action or inaction."

### SECTION 3.

Article 2 of Chapter 4 of Title 29 of the Official Code of Georgia Annotated, relating to procedure for appointment of guardians for adults, is amended by adding a new Code section to read as follows:

"29-4-18.

(a) As used in this Code section, the term:

(1) 'Adult unable to consent' means a person 18 years of age or older who has been determined in his or her medical records by a licensed physician after the physician has personally examined the adult that he or she lacks sufficient understanding or capacity to make significant responsible decisions regarding his or her medical treatment or the ability to communicate by any means such decisions.

(2) 'Life-sustaining procedures' means medications, machines, or other medical procedures or interventions which, when applied to a medical consent ward in a terminal

condition or in a state of permanent unconsciousness, could in reasonable medical judgment keep such medical consent ward alive but cannot cure the medical consent ward and where, in the judgment of the medical consent ward's primary treating physician and a second physician, death will occur without such procedures or interventions.

(3) 'Medical consent ward' means a ward for whom the court has appointed a temporary medical consent guardian pursuant to this Code section for a limited time and only for the purposes of consenting to surgical or medical treatment or procedures not prohibited by law.

(4) 'Proposed medical consent ward' means an adult unable to consent who is or has been a patient in a health care institution or of a health care provider.

(5) 'State of permanent unconsciousness' means an incurable or irreversible condition in which the medical consent ward is not aware of himself or herself or his or her environment and in which such medical consent ward is showing no behavioral response to his or her environment.

(6) 'Temporary medical consent guardian' means an individual appointed pursuant to the provisions of this Code section for a limited time and only for the purposes of consenting to surgical or medical treatment or procedures not prohibited by law.

(7) 'Terminal condition' means an incurable or irreversible condition which would result in the medical consent ward's death in a relatively short period of time.

(b) In the absence, after reasonable inquiry, of a person authorized or willing to consent for the proposed medical consent ward under the provisions of Code Section 31-9-2, any interested person, including the proposed medical consent ward, may file a petition for the appointment of a temporary medical consent guardian. The petition shall be filed in the court of the county in which the proposed medical consent ward is domiciled or is found.

(c) The petition for appointment of a temporary medical consent guardian shall set forth:

(1) A statement of the facts upon which the court's jurisdiction is based;

(2) The name, address, and county of domicile of the proposed medical consent ward, if known;

(3) The name, address, and county of domicile of the petitioner and the petitioner's relationship to the proposed medical consent ward;

(4) A statement of the reasons the temporary medical consent guardian is sought, including:

(A) Facts that support the need for such guardian including facts that establish what medical decisions are needed and why those decisions are needed without undue delay;

(B) Facts that support the determination that the proposed medical consent ward lacks sufficient capacity to make or communicate medical treatment decisions; and

(C) The anticipated duration of the temporary medical consent guardianship;

1 (5) The fact that no other person appears to have authority and willingness to act in the  
2 circumstances, whether under a power of attorney, trust, or otherwise;

3 (6) The reason for any omission in the petition for an appointment of a temporary  
4 medical consent guardian in the event full particulars are lacking; and

5 (7) Whether a petition for the appointment of a guardian or conservator has been filed  
6 or is being filed in conjunction with the petition for the appointment of the temporary  
7 medical consent guardian.

8 (d) Upon the filing of a petition for a temporary medical consent guardian, the court shall  
9 review the petition to determine whether there is probable cause to believe that the  
10 proposed medical consent ward lacks decision-making capacity and is in need of a  
11 temporary medical consent guardian and either:

12 (1) Dismiss the petition and provide the proposed medical consent ward with the order  
13 dismissing the petition; or

14 (2) If the court determines that there is probable cause to believe that the proposed  
15 medical consent ward is in need of a temporary medical consent guardian, immediately:

16 (A) Appoint legal counsel to represent the proposed medical consent ward, which  
17 counsel may be the same counsel who is appointed to represent such adult in the  
18 hearing on the petition for guardianship, if any such petition has been filed, and the  
19 court shall inform counsel of the appointment;

20 (B) Order a preliminary hearing to be conducted within 72 hours after the filing of the  
21 petition; and

22 (C) Notify any proposed medical consent ward of any proceedings by service of all  
23 pleadings on such proposed medical consent ward, which notice shall be served  
24 personally on the proposed medical consent ward by an officer of the court and shall  
25 not be served by mail, and such notice shall inform the proposed medical consent ward:

26 (i) That he or she has the right to attend any hearing that is held in connection with  
27 the petition to appoint a temporary medical consent guardian;

28 (ii) That he or she may lose important rights to control the management of his or her  
29 person if a temporary medical consent guardian is appointed;

30 (iii) That legal counsel has been appointed on his or her behalf; and

31 (iv) The date and time of the preliminary hearing on the petition to appoint a  
32 temporary medical consent guardian.

33 (e) Unless waived by the court, notice of the petition and the preliminary hearing shall also  
34 be served on the following persons who have not joined in the petition or otherwise  
35 consented to the proceedings:

36 (1) The administrator of the hospital or other health care facility where the proposed  
37 medical consent ward is located;

1 (2) The primary treating physician and other physicians believed to have provided any  
2 medical opinion or advice about any condition of the proposed medical consent ward  
3 relevant to this petition;

4 (3) All other persons the petitioner believes may have information concerning the  
5 expressed wishes of the proposed medical consent ward; and

6 (4) Any other persons as the court may direct.

7 (f) At the preliminary hearing, the court, in its discretion, shall:

8 (1) Appoint a temporary medical consent guardian;

9 (2) Order an evidentiary hearing to be conducted not later than four days after the  
10 preliminary hearing; or

11 (3) Dismiss the petition and provide the proposed medical consent ward with the order  
12 dismissing the petition.

13 (g) If the court orders an evidentiary hearing, in addition to any other evidence presented  
14 to the court, the court may consider any case review by the hospital's or health care  
15 facility's ethics committee or subcommittee thereof or by any other appointed ethics  
16 mechanism.

17 (h) If the court holds an evidentiary hearing, the court, in its discretion, shall either:

18 (1) Appoint a temporary medical consent guardian; or

19 (2) Dismiss the petition and provide the proposed medical consent ward with the order  
20 dismissing the petition.

21 (i) The court shall have the authority to appoint as a temporary medical consent guardian  
22 any individual the court deems fit with consideration given to any applicable conflict of  
23 interest issue so as long as such individual is: (1) willing and able to become involved in  
24 the proposed medical consent ward's health care decisions and (2) willing to exercise  
25 reasonable care, diligence, and prudence and to consent in good faith to medical or surgical  
26 treatment or procedures which the proposed medical consent ward would have wanted had  
27 he or she not been incapacitated. Where the medical consent ward's preferences are not  
28 known, the temporary medical consent guardian shall agree to act in the medical consent  
29 ward's best interests. However, a temporary medical consent guardian shall not be  
30 authorized to withdraw life-sustaining procedures unless specifically authorized by the  
31 court pursuant to this Code section.

32 (j) The temporary medical consent guardianship shall terminate on the earliest of:

33 (1) The court's removal of the temporary medical consent guardian;

34 (2) The effective date of the appointment of a permanent guardian under Code Section  
35 29-4-2;

36 (3) The duration of the current hospitalization or stay in another health care facility of  
37 the medical consent ward; or

(4) Sixty days from the date of appointment of the temporary medical consent guardian.

(k)(1) No hospital or other health care facility, health care provider, or other person or entity shall be subject to civil or criminal liability or discipline for unprofessional conduct solely for complying in good faith with any direction or decision by a temporary medical consent guardian, even if death or injury to the medical consent ward ensues. Each hospital or other health care facility, health care provider, and any other person or entity who acts in good faith reliance on any direction or decision by a temporary medical consent guardian shall be protected and released to the same extent as though such person had interacted directly with the medical consent ward as a fully competent person.

(2) No temporary medical consent guardian who, in good faith, acts with due care for the benefit of the medical consent ward, or who fails to act, shall be subject to civil or criminal liability for such action or inaction."

#### **SECTION 4.**

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

#### **SECTION 5.**

All laws and parts of laws in conflict with this Act are repealed.